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IN THE

United States Supreme Court

OCTOBER TERM 1967

No. 963

MARIAN FORD STUCKER,

Petitioner,

v.

THE COLLEGE LIFE INSURANCE COMPANY OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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Petitioner, Marian Ford Stucker, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Indiana entered in the above-captioned case on October 13, 1966.

OPINION BELOW

The trial court entered a judgment on the 8th of January, 1962, printed herein at pp. 1a as Appendix A. The Indiana Appellate Court rendered judgment affirming the trial court and entered an opinion on the 7th of July, 1965, which is printed herein at pp. 3a as Appendix B and is reported at 208 N. E. 2d. 731. The Indiana Appellate Court denied the Petition for Rehearing on November 8th, 1965, which is printed in part herein at pp. 23a as Appendix C and is reported at 211 N. E. 2d 320. The Indiana Supreme Court denied the petition to Transfer on October 13, 1966, without opinion by docket entry.

JURISDICTION

The Indiana Appellate Court entered its opinion affirming the Judgment of the trial court on July 7th, 1965. A timely Petition for Rehearing was filed on July 27th, 1965. On November 8th, 1965, the Petition for Rehearing was denied. On November 24, 1965, a timely Petition to Transfer was filed in the Indiana Supreme Court. On October 13, 1966, the Petition for Transfer was denied without opinion by docket entry. This Petition for Certiorari is filed within 90 days of that denial. The specific federal questions now presented by this Petition for Certiorari were first raised in the trial court in the pleading stage of this action and are more fully explained in the statement which follows:

Accordingly, a final judgment subject to review by this court has been entered.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

QUESTIONS PRESENTED

The federal questions raised in this appeal are:

1. Whether the Indiana Courts violated the dictates of the full faith and credit clause of the United States Constitution, U.S. Const. Art. IV, Sec. 1, by failing to apply the law of the State of Colorado for the purpose of determining whether or not Petitioner had stated a good cause of action for recovery in her complaint.

2. Whether the Korean Conflict was a "war" within the Constitutional meaning of war as defined under Article IV, section 8, of the United States Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Petitioner's claim is founded on Article IV, section 1, the Full Faith and Credit clause of the Constitution of the United States, which reads:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State . . ."

and Article I, section 8, the war clause of the Constitution of the United States, which reads:

> "The Congress shall have Power . . .
> "To declare war . . ."

STATUTES

Colorado Rev. Stat. Ann., Vol. 3, Ch. 72, Art. 3.

STATEMENT OF CASE

On March 15, 1951, Lyle D. Stucker purchased from the College Life Insurance Company of America a policy

of life insurance on his life containing provisions for payment of $10,000.00 in the event of his death and $20,000.00 in the event of his death by accidental means. The proceeds of this policy were to be paid to a beneficiary selected and designated by Lyle D. Stucker. After the death of Lyle D. Stucker, the named beneficiary, wife of the insured, Marian Ford Stucker, brought an action, on May 18, 1954, in the Marion Superior Court, Room No. 1, State of Indiana, seeking recovery for both the benefits under the ordinary life provisions and double indemnity provisions provided in the said policy of life insurance. The College Life Insurance Company of America is now and was a corporation duly incorporated under the laws of the State of Indiana. Lyle D. Stucker was a resident of the State of Colorado, and said policy of insurance was issued and the contract was executed in the State of Colorado. Marian Ford Stucker, the wife of the insured and beneficiary under said policy, is now and has been a resident of the State of Colorado. After four amended complaints, the fourth having been further amended by interlineation, the College Life Insurance Company of America filed a demurrer on the grounds and for the reason that the petitioner in this action failed to state facts sufficient to constitute a cause of action. The basis of the respondent's demurrer was a "war risk" exclusion clause contained in said policy. The trial court sustained the respondent's demurrer, and thereafter entered judgment against petitioner. The Appellate Court of Indiana affirmed the judgment of the lower court and the Supreme Court of Indiana denied petitioner's Petition to Transfer the case.

In her complaint, Marian Ford Stucker alleged her husband, the insured, died from bullet wounds received in the Country of Korea.

Clause three of Count I of the petitioner's fourth amended complaint as further amended by interlineation stated:

> That the beneficiary of said policy is designated as his wife, Marian Ford Stucker. That thereafter on the 16th day of October, 1952, the said Lyle D. Stucker died in Korea as a result of bullet wounds received in the Country of Korea while in the service of the United Nations. The exact place and time being unknown to the plaintiff. Plaintiff is unable to allege with any greater particularity the place decedent received the fatal bullet wounds, by whom inflicted, or under what circumstances same were received. (R49)

Clause five of Count II of petitioner's fourth amended complaint as further amended by interlineation stated:

> That on or about the 16th day of October, 1956, while said policy was in full force and effect, and while the Double Indemnity Provision for accidental death benefit was also in full force and effect, which said Double Indemnity Provision is hereinbefore set out, and all premiums due on said policy on the Double Indemnity Provision thereof were fully paid, the said Lyle D. Stucker sustained bodily injuries affected directly to accidental violent and external means while engaged in the Korean Action in the Country of Korea, and from which injuries, he died in Korea on the 10th day of October, 1952." (R35)

The trial court on the 8th day of January, 1962 entered a judgment for the Respondent subsequent to the Petitioner's refusal to plead over. (Appendix A pp. 1a) The foundation of the Respondent's demurrer that the Petitioner failed to state facts sufficient to constitute a cause of action was that the "war risk" exclusion provisions contained in the policy of insurance precluded recovery of the ordinary benefits and the Double Indemnity benefits as provided for in the policy. The clause con-

tained in the policy and relied on by the respondent in their demurrer to the petitioner's demand for the ordinary benefits stated:

"If the death of the Insured

(1) Results from injury received or disease contracted outside the Home Area as a result of War, while the Insured is in war service or within six months after termination of such service; or.....

the amount payable to the beneficiary under this policy shall be a single sum equal to the premiums actually paid on this policy less any dividends returned, with compound interest at the rate of three per cent per annum, less any indebtedness on the policy; however, the amount so paid shall not be more than would be payable in the absence of this aviation and war risk provision, nor less than the valuation reserve on the life insurance benefit in this policy and on any dividend additions plus the value of any dividend deposits and less any indebtedness on the policy.

"'Home area' means the forty-eight states of the United States, the District of Columbia, the Dominion of Canada, the Territory of Hawaii and the Territory of Alaska. 'War' means war, or any act of war, declared or undeclared. 'War service' means being in the military, naval, or air forces of any country, or international organization, at war, declared or undeclared." (R53)

The clause contained in the policy and relied on by the Respondent in their demurrer to the Petitioner's demand for the Double Indemnity benefit stated:

"This Double Indemnity Benefit shall not apply if the Insured's death

(1) occurs while in the military, naval, or air forces of any country at war, declared or undeclared; or,

(2) is caused or contributed to by war." (R55)

The Petitioner in her "Memorandum in Opposition to Defendant's Demurrer to Count I and Count II of Plaintiff's Fourth Amended Complaint filed the 2nd day of June, 1961, stated that, "Before Korean Action can be considered legally as a war within the meaning of the Constitution of the United States it must be recognized and declared as a war by the Congress of the United States. No power short of this can alter the legal status of the government or the relations of its citizens from that of peace to a state of war. The Constitution of the United States pertinent here reads:"

> 'Article 1, Section 8, Congress shall have power to . . . declare war, to raise and support armies, to provide and maintain a navy, to make rules for the government and regulation of the land and naval forces.' (R63)

In addition to raising the question of the Constitutional definition of war the Petitioner further pointed out to the Indiana trial court the holding of the Supreme Court of Colorado, the state where the contract was executed, in the case of *Pyramid Life Ins. Co. v. Masch* 134 Colo. 70, 299 P.2d 117, (1956) quoting in part from that decision and restated here

> "We are asked to take judicial notice that the engagements of United States troops in Korea constitutes "war"; this, in spite of the fact, as counsel for the defendant admit that "war" was never declared by Congress, the only authority competent to declare it, with respect to the action Korea. The existence or nonexistence of a state of war is a political, not a judicial question and it is only when a formal declaration of war had been made by the Congress that judi-

cial cognizance may be taken thereof. Once so declared by the political department, it becomes binding upon the courts otherwise not." (R65)

The Petitioner also set forth in her memorandum in Opposition to Defendant's Demurrer that:

> "War," according to the law of nations, the United States Constitution, the State of Colorado, the State of Indiana, and the State of Pennsylvania having a meaning of "declared War," then "war Service" can only mean, legally speaking, declared war service. So, too, an act of war means in legal connotation an act of declared war. Again, citing the 1956 Colorado case of Pyramid Life vs. Masch, supra, Court declares at page 119,
>
> 'Any doubt concerning the meaning of a word or clause in a life insurance policy should be resolved in the favor of the Insured. Had the defendant decided to cover the contingency here involved it would have been a simple matter to include proper words to indicate that 'hostilities', whether or not declared by Congress to be a state of war.' (R66)

Contending that she had stated facts sufficient in her complaint to constitute a cause of action the Petitioner pointed out to the court that:

> If the Court choose to abandon the Constitutional meaning of war, the meaning of war by case law in the State of Indiana since 1871, and the meaning of war in the State of Colorado by case law reasserted in 1956, it at once opens the avenue of ambiguity. However, it is a general rule of law as previously pointed out that ambiguities in insurance policies should be construed against the insurrer. It is therefore, quite clear that the plaintiff has stated a cause of action and if the defendant desired to raise issues of fact he should set forth such facts in his answer. (R68)

A change of venue was then filed by the Petitioner in the Marion Superior Court of the State of Indiana on the 5th day of June, 1961 (R70). The change was granted on the 5th day of June, 1961 (R70), and the case was transferred to the Morgan Circuit Court of the State of Indiana on the 24th day of August, 1961 (R71). On November 8, 1961, the Petitioner filed in the Morgan Circuit Court a Motion to Reconsider Sustaining of Defendant's Demurrer to Count I and Count II of Plaintiff's Fourth Amended Complaint and memorandum (R74). The court overruled the Petitioner's Motion to Reconsider on the 11th of December, 1961 and ruled the Petitioner to file a fifth amended complaint on or before the 23rd of December or suffer default (R101). On the 8th of January, 1962, judgment was entered against the Petitioner (Appendix A. pp. 2a).

Petitioner appealed to Indiana Appellate court assigning as error: 1) the sustaining of the Respondent's demurrer to the Petitioner's fourth amended complaint and 2) the overruling of the Petitioner's motion to reconsider the sustaining of the Respondent's demurrer to the amended complaint. On the 7th of July, 1965, the Indiana Appellate Court affirmed the Judgment of the trial court. (Appendix B, pp. 3a).

In the opinion of the Indiana Appellate court the Constitutional issue arising under the "full faith and credit clause" of the Constitution of the United States was clearly recognized inasmuch as the court stated:

> At the outset of argument, appellant urges that the "Law of Colorado" should govern the obligations of appellee with respect to the insurance policy here involved. It appears from the application for the insurance, executed by the insured, that it was dated March

> 15, 1951, and gave his residence as Box 412, Delta (Delta County) Colorado, and his school address as 714 Remington, Ft. Collins, Colorado ...
>
> The policy states that it was issued on March 15, 1951, the same date as that of the application. We conclude, therefore, that the policy was made in the State of Colorado, as appellant claims. Such claim is not contested by appellee in its brief. The parties differ, however, on the question of whether the law of Colorado governs the obligation of appellee under the policy. (Appendix B, pp. 7a-8a)

Even though the Indiana Appellate Court recognized the significance of Colorado law the court declined to apply it in deciding the question presented on appeal. On page ten of the appellate court's opinion, the court stated:

> In the light of the distinction of the clauses in the decisions cited by appellant and the clause in the present policy, and further considering the reference made in the *Pyramid* and *Beley* cases to possible words of explanation, we feel those cases cited by the appellant and specifically the *Pyramid* case, are not controlling in the case at bar. (Appendix B, pp. 11a)

On the 27th of July, 1965, the Petitioner petitioned the Indiana Appellate Court for rehearing. This petition for rehearing was denied on the 8th of November, 1965. (Appendix C, pp. 23a) The Petitioner then petitioned to the Supreme Court of Indiana requesting transfer on the 24th of November, 1965. On the 13th of October, 1966, the Supreme Court of Indiana denied the Petitioner's petition to transfer.

ARGUMENT

I.

THE STATUTES AND CASE LAW OF THE STATE OF COLORADO SHOULD BE GIVEN FULL FAITH AND CREDIT BY THE STATE OF INDIANA FOR THE PURPOSE OF DETERMINING WHETHER OR NOT PETITIONER STATED A GOOD CAUSE OF ACTION FOR RECOVERY IN HER COMPLAINT ON INSURANCE POLICY EXECUTED AND ISSUED IN COLORADO TO A COLORADO RESIDENT.

The appellate Court of Indiana, in its opinion which was denied transfer to the Supreme Court of Indiana, decided the question of whether or not the Petitioner stated facts sufficient to constitute a cause of action contrary to the Constitution of the United States. The right of the Petitioner to have her complaint tested for sufficiency against the law of Colorado is a right guaranteed by the Full Faith and Credit clause of the Constitution of the United States, Article IV, Section 1.

> The purpose of the full faith and credit provision of the Federal Constitution is to preserve rights acquired or confirmed under the public acts and judicial proceedings of one state by requiring recognition of their validity in others. *Pink v. A. A. A. Highway Express* 314 U. S. 201, (1941)

The test used to determine the recognition that must be given to the laws of another state by the state in which the litigation is proceeding is to balance the interest each state has in the subject of the litigation. When this con-

flict arises between two states as to which state law should be determinative of the issues presented presents a question under the full faith and credit clause of the Constitution. *Etna Life Ins. Co. v. Dunken* 266 U. S. 389 (1924), *Hartford Accident & Indemnity Co. v. Pine Land Co.* 292 U. S. 143 (1934). It is contended that this guarantee found in the Constitution of the United States performs one of its most important functions when the State under which the particular rights in question arose has decided a same or similar question favorable to the party now asserting its application. In *Pink v. A. A. A. Highway Express* supra. Mr. Chief Justice Stone wrote in reference to this question that:

> When such conflict of interest arises it is for this Court to resolve it by determining how far the full faith and credit clause demands the qualification or denial of rights asserted under the laws of one state, that of the forum, by the public acts and judicial proceedings of another. Citing *Alaska Parkers Asso. v. Industrial Acci. Commission,* 294 U. S. 532 547 (1941), *Pacific Employers Ins. Co. v. Industrial Acci. Commission* 306 U. S. 493 (1930).

The Appellate Court of Indiana held that the law of Colorado did not apply in deciding whether or not the petitioner had stated facts sufficient to constitute a cause of action, rejecting both the Colorado case of *Pyramid Life Ins. Co. v. Masch* 134 Colo. 70, 299 P.2d 117 (1956) and the Colorado statute, to-wit:

> Any foreign life or accident insurance company doing business in the state of Colorado, and where the insurance contract is made in this state, shall pay its obligations when same are due and payable through its agent in the county where the contract was made, or at the office of its general agent within this state,

> after approval by the proper officers at the home office of the company, upon presentation of the insurance contract and proofs required thereunder by the insured, assigns or beneficiaries. This insurance contract shall be deemed to be made and payable in the State of Colorado, if made through an authorized agent of such insurance company within this state, irrespective of where the insurance contract may be written." Colo. Rev. Stat. Ann. Vol. 3 ch 72 art 3 522 p. 957.

It is recognized that "war risk" clauses have been the subject of much litigation and the courts of this County have not agreed on the construction of these clauses. This fact was stated by the Indiana Appellate Court:

> Many State Courts of last resort have been called upon to interpret similar "war risk" clauses as that in the *Pyramid* case and, under the same circumstances some have followed the so-called constitutional interpretation as in the *Pyramid* and *Beley* cases. However, the majority have held that similarly worded clauses under like circumstances should be interpreted in their broad sense and that the Korean Conflict was a "war" within such clause. (Appendix B, pp. 16a-17a)

The Colorado Supreme Court in the Pyramid Life Case stated in deciding this question that:

> We are asked to take judicial notice that the engagements of United States troops in Korea constituted "War"; this, in spite of the fact, as counsel for defendant admit, that "war" was never declared by Congress, the only authority competent to declare it, with respect to the action in Korea. *Pyramid Life Ins. Co. v. Masch* 134 Colo. 70, 299 P.2d 117 (1956).

When a state court is faced with a conflict between its public policy and that of another state, its public policy

may have to subordinated to the law of the state wherein the alleged right arose.

> A recent line of decisions by the United States Supreme Court, however, seems to indicate that the courts of the various states are not free, in the field of conflict of laws, to decline to apply the proper applicable law merely because of their public policy or a local statute contrary to the right involved, and to apply their own law, but that these constitutional provisions place certain restrictions and limitations upon their power in that regard." *John Hancock Mut. Life Ins. Co. v. Yates* 299 U. S. 178 (1938)

If the issue is one of construction of terms contained in a contract and the question is which state law should be followed to establish the meaning of the terms; the law of the place where the contract was executed is controlling.

> When the question of the place where a contract of insurance was made is solved, the determination of the questions as to the construction to be placed upon the terms of the contract and as to the validity thereof and of the laws which are to govern such construction and validity is comparatively easy because it is an almost universal rule that the contract of insurance must be governed by the law of the state where such contract is finally consummated. Where a policy is executed and delivered, and the premiums are paid, in the state of the insured's residence, such policy is governed by the laws of that state. 29 Am. Jur Ins. §31 p. 450

Colorado, the State where this contract was executed, the State of residence of both the Petitioner and the insured followed the minority view or the Constitutional interpretation of the meaning of "war." The full faith and credit clause, Article IV, Section 1, of the Constitution of the United States gives the citizens of each State

the assurance that their legal rights will be decided under the laws of their state. If the State courts are not in agreement resulting in majority and minority position, the impact and importance of the full faith and credit clause as the guardian of the rights of those citizens of a State following the minority view is readily apparent.

II.

WAR SHOULD BE DEFINED IN ITS CONSTITUTIONAL AND LEGAL SENSE TO ASSURE A DEFINITE AND ESTABLISHED STANDARD OF MEANING.

The Constitution of the United States in Article I, section 8, grants and at the same time defines the Power entrusted to the Congress of the United States. Included in these powers granted to Congress is, "the power to declare war". Nowhere in the document that created and at the same time limited the power of the Federal Government is this power to declare war given to any other individual, political body or branch of government. For a "war" in which the United States participates to exist as a state of fact it must be declared by Congress. The definition to be given to the word "war" has been raised in many of the State Courts of this Country. An attempt to gather from the various decision a general rule or guide line as to the meaning of war as used in insurance policies has not been successful.

> "Regarding the question whether in determining the commencement of an armed conflict, the term "war" should be construed in its legal sense, requiring an official declaration of war by Congress, or whether such term should be construed in its broader sense and given its common everyday meaning, the cases are in

inconcilable conflict." 29 A. Am. Jur. Ins. §1206 p. 346.

The Supreme Court of Colorado when faced with this question held:

> The existence or non existence of a state of war is a political not a judicial, question and it is only when a formal declaration of war has been made by the Congress that judicial cognizance may be taken thereof. Once so declared by the political department, it becomes binding upon the Court, otherwise not. *Pyramid Life Ins. Co. v. Masch* supra.

However, the Indiana Appellate Court construed the meaning of the word war in its real and practical sense.

> "In our opinion, when the policy of insurance, which is the subject of this suit, was issued, the parties contracted with reference to war in its real and practical sense and meaning . . ." (Appendix B pp. 22a)

The difficulty which results from construing the meaning of the word "war" in a real or practical sense is that no definite positive standard is established to determine whether or not war exists as a fact unless each individual case wherein the question arises is decided by a court. There have been many military actions taken by the United States which historically are not and could not be considered war. In the Constitutional sense "war" can only exist when it has been declared by Congress. If Congress does not declare war, war as a legal fact does not exist and an undeclared war is a non-legal entity and an ambiguity, there being no definite or established meaning to the terms.

The Indiana Court discussed the issue of the existence or non-existence of a war to great length and decided that question contrary to the law of the State of Colorado and contrary to the full faith and credit clause of the Constitution of the United States.

CONCLUSION

For the reasons stated, this Petition for a Writ of Certiorari to the Supreme Court of Indiana should be granted.

Respectfully submitted,

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